IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4470 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VARSHABEN DEVENEDRABHAI PATEL & 2 - Applicant(s)
Versus
STATE OF GUJRAT & 1 - Respondent(s)

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Appearance :
MR AD SHAH for Applicant(s) : 1 - 3.
MS.MANISHA L. SHAH APP for Respondent(s) : 1,
MR ASHIT K MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 14/02/2007

ORAL JUDGMENT

1. The petitioners, trustees and office bearers of a School, have invoked the provisions of Section 482 of the Code of Criminal Procedure, 1973 with the prayer of quashing Criminal Case No.10322 of 1995 alleging offences punishable

under Sections 500 and 506(1) read with Section 114 of the Indian Penal Code. The main allegations in the complaint are to the effect that the complainant was serving as a teacher, employed in the kindergarten run by the petitioners. It is alleged that petitioner Nos.2 and 3 were having a grudge against her and were insisting upon the complainant submitting resignation on the basis of the allegations that the complainant did not know anything and was very harsh on the young pupils. Such derogatory statements were being made in presence of other teachers and parents of the pupils, according to the allegations. While discharging the complainant from service, defamatory statements are alleged to have been made in the order of termination dated 01.02.1995 wherein it is alleged in writing that the complainant was not properly behaving with the parents and she was imposing corporal punishment on the pupils. When the complainant asked for explanation for making such allegations, she was asked whether she attended the school for teaching or flirting, and

she was told that it was not a “fashion parade”, according to the allegations. It is further alleged that her estimation has been ruined on account of termination from service and as the news of the termination of her service have also been published in the dailies, she was defamed. It is further alleged that the petitioners had threatened her on telephone for obtaining her resignation.

2. Learned counsel for the respondent, original complainant, appears to have constantly not attended this matter and today nobody is present for the original complainant, nor is a mention made on behalf of her learned advocate.

3. Learned counsel Mr.A.D.Shah, appearing for the applicants, submitted that the complaint as well as the statement recorded thereunder on 19.09.1995 were absolutely vague and only calculated to drag the petitioners to the criminal court with a view to take revenge for terminating the service of the complainant on

valid grounds. He submitted that the order dated 01.02.1995 to terminate her service from 30.04.1995 clearly stated the ground of unsatisfactory record of service and that private communication addressed to the complainant herself could not be the basis of a complaint for defamation. He also submitted that the absence of details about when and whether and by whom and in whose presence the alleged defamatory words were told to the complainant or how and by whom she was threatened on the telephone to submit her resignation, even after termination of service, clearly shows that *ex-facie,* the complaint was concocted with an ulterior motive and could never result into conviction of any of the accused persons. On that basis, he submitted that the complaint and the order thereon to issue summons being apparently an abuse of the process of Court, they were required to be quashed in the interest of justice.

3.1. Learned counsel Mr.Shah relied upon the judgment of the full bench of Allahabad High

Court in **Queen-Empress V/s. Taki Husain** wherein the following question was referred to the full bench of five learned Judges of the Allahabad High Court in 1884:-

> "Assuming for the purpose of argument, that the matter contained in the notice sent by the applicant to Basawan Singh was defamatory in the sense of Explanation (4) to Section 499 of the Indian Penal Code, and that none of the Exceptions provided under that section can be established, then was the action of the applicant in sending the notice in a closed cover by post to Basawan Singh such a making or publishing of the defamatory matters as to constitute an offence within the terms of Section 499 of the Indian Penal Code?"

3.2. In the concurring separate opinions, Mahmood, J. observed that the imputations communicated to the prosecutor only, could not be treated as defamatory. A man's opinion of himself cannot be called his reputation and Petheram C.J. observed that, if the illustrations to Section 499 were looked at, they all deal with such communications only as are made to third persons.

A man has no reputation to himself and, therefore, the section does not make an act of this nature a crime. It follows that sending of the letter was not “making” or “publishing” an imputation within the meaning of Section 499.

3.3. The judgment of the Kerala High Court in **Kader V/s. Fousia reported in Crimes 1990(1) 352** was cited in support of the submission that the petitioners could not be proceeded against for the offence under Section 499 of the Indian Penal Code unless the imputation was made public and the complainant's reputation was brought down in the estimation of others by the petitioners. **Sunilakhya Chowdhury V/s. H.M. Jadwet and another [AIR 1968 Calcutta 266)** was relied upon to submit that the offence of defamation consists of three essential ingredients, namely, (1) making or publishing any imputation concerning any person (2) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations and (3) the said imputation must have been made with the intention

to harm or with knowledge or having reason to believe that it will harm the reputation of the persons concerned. It was held therein that if a person merely writes out a defamatory matter but does not publish the same, i.e. does not circulate to others, it will not be defamation. The word 'make' is intended to refer to the originator of the imputation. It was also held in **U.M. Aravamutha Iyengar V/s. Rajarathna Mudaliar [AIR 1957 Madras 572]** that there must be evidence of publication to constitute defamation and till the letter was published it cannot be said that defamation was committed.

4. Learned A.P.P. Ms.Manisha L. Shah, appearing for the State, submitted that even as the original complainant was joined as party respondent and neither any affidavit-in-reply was filed nor any one was appearing to assist the Court on her behalf, the Court was required at this stage to peruse the complaint as a whole and as observed by the Supreme Court, the complaint may not reveal all the ingredients of the alleged

offences, but it would be in the rarest of the rare case that the High Court should exercise its inherent powers to quash the complaint and stifle the prosecution at the stage of initiation of the trial. Learned A.P.P. Ms.Manisha L. Shah relied upon the observations of the Hon'ble Supreme Court in **Rajesh Bajaj V/s. State NCT of Delhi and others [AIR 1999 SC 1216]** and **Mahavir Prashad Gupta and another V/s. State of National Capital Territory of Delhi and others [AIR (2000)8 SCC 115].** It was emphasised that if the complaint disclosed an offence, the High Court should not embark upon an inquiry as to genuineness of the allegations made in the complaint or whether those allegations were likely to be established on evidence.

5. It is categorically held in the judgment of the Supreme Court in **State of Haryana and others V/s. Bhajanlal and others [1992 Supp(1) SCC 335]** that where the allegations in the complaint, even if they were taken at their face value and

accepted in their entirety, do not *prima facie* constitute any offence or make out a case or where the allegations in the complaint are so absurd and inherently improbable that no prudent person would find sufficient ground for proceeding or where the criminal proceeding is manifestly attended with *mala fide* or it is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the inherent power ought to be exercised to end unnecessary prosecution.

6. It was seen from bare perusal of the complaint that the complaint as well as the statement on oath recorded below were vague and details were left to be filled up. There is no gainsaying the fact that the teacher was discharged from service expressly on the ground of her record of unsatisfactory service. After the allegations of defamation by spoken words in presence of unnamed teachers or parents, it is not even alleged that the words were intended to or did harm her reputation. The complainant

appears to be mainly relying upon the words used in the letter terminating her service, and the words used in the letter of termination, even if assumed to be defamatory, were communicated to her only. Therefore, such communication would be covered by Explanation (4) since the imputation could not lower the moral or intellectual character of the complainant, or, by itself, lower the character in the estimation of others. The remaining allegations about asking of questions by the petitioners, who were managing a school, about the behaviour of the complainant could not be termed as defamatory in so far as the petitioners were entitled to question the teacher if her behaviour was found to be questionable. Thus, in short, it clearly appears that the complainant had set the machinery of criminal court into motion only with a view to take revenge against termination of her service and, taking the allegations even at their face value, the complaint did not make out or disclose an offence for which the petitioners could be tried. In this view of the matter, the petition

is required to be allowed and accordingly it is allowed with the direction that the proceedings of Criminal Case No.10322 of 1995 pending in the court of learned Judicial Magistrate First Class, Surat are quashed. Rule is made absolute with no order as to costs.

(D.H.WAGHELA, J.)

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